

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 76397

John Cuthbert
Betty Cuthbert
136 Hopkins Road
Baltimore MD 21212

200 Wilden Drive

Respondents

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on July 21, 2010 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 102.5, failure to reduce height of fence to 36" at corners of alleyways regarding residential property known as 200 Wilden Drive, 21286

On May 26, 2010, pursuant to § 3-6-205, Baltimore County Code, Inspector Kim Wood issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$6,000.00 (six thousand dollars).

The following persons appeared for the Hearing and testified: John and Betty Cuthbert, Respondents, Lee Maderi, tenant and daughter of Respondents, Hina Waltemeyer, Douglas and Libby Zingo, Complainants and, Kim Wood, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. A Correction Notice was issued on April 26, 2010 for reduction of fence height to 36 inches at corner of alleyways. This Citation was issued on May 26, 2010.

B. Inspector Kimberly Wood testified that these notices were issued because there is a fence at the rear of this property that is six feet tall instead of the permitted maximum three feet in height. The fence wraps around the rear of the property along the alley.

C. Photographs show an attractive wood board fence that fully encloses the rear of the lot. Photographs provided by Respondents show attractive landscaping and a seating area within the fence. Notes provided by Respondents state that the yard was similarly fenced for at least 25 years before the current fence was installed ten and a half years ago.

D. Complainant Hina Waltemeyer, a neighbor, testified that the dynamics of the neighborhood are changing and there are lots of small children who play outside and play in the alleyway. She testified that the fence creates a severe blind spot, and that newer cars are hard to hear coming; college kids speed down the alley; and a landscaper uses the alley to reach storage areas and drives trucks down the alley. Another neighbor, Libby Zingo, testified that she was in an alley and saw a near-accident when two neighbors came around the corner and nearly collided.

E. Respondent Betty Cuthbert testified that she and her husband have owned the property for 24 years, and their adult daughter currently lives in the house. Their neighbor raised four children with no problems and there has always been a fence in the yard. She testified that it would be a hardship to remove or reduce the height of the fence because it provides privacy and screening.

F. Review of the photographs of the property and the aerial view of the neighborhood from the GIS system shows that this property is served by a rear alley, and that the alley curves around this property to reach Wilden Drive. Baltimore County Zoning Regulations restrict obstructions such as fences or plantings at intersections. BCZR 102.5. Neither the County Code nor the County Zoning Regulations define "intersection." Maryland law defines "intersection" as an area where lateral

boundary lines of two highways join at or approximately at right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict. Section 21-101(l) of the Transportation Article, Maryland Annotated Code. Here, there is a single alley that curves around Respondent's property, not two intersecting alleys, so the County's zoning regulation does not apply. This Citation will therefore be dismissed.

G. With regard to safety concerns raised by the Complainants, this Hearing Officer notes that alleyways in Maryland are intended to provide access to the rear or side of a lot or building, and are not intended for through vehicular traffic. Section 21-101(b) of the Transportation Article, Maryland Annotated Code. They are also not intended for playground use by children. If there are observed safety issues for vehicles using the alley, residents may want to put up reflective mirrors or other aids to drivers.

IT IS ORDERED by the Code Enforcement Hearing Officer that the Citation is DISMISSED.

ORDERED this 9th day of August 2010

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer